In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 499

ROBERT L. HOLCOMB, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. 1a–8a) is unreported.

JURISDICTION

The judgment of the Court of Claims was entered on July 12, 1956. The petition for a writ of certiorari was filed on October 10, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

Whether the Court of Claims correctly held that petitioner was effectively separated from the War Assets Administration prior to its abolition and, therefore, was not entitled to be transferred to the General

Services Administration when the remaining functions of the War Assets Administration were so transferred.

STATUTE INVOLVED

Section 12 of the Veterans Preference Act of 1944, 58 Stat. 387, 390, as amended, 61 Stat. 723, 5 U. S. C. 861 (1952) provides:

> In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: * * * *And provided further,* That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions.

STATEMENT

Petitioner, a veterans preference eligible with civil service status, held a position with the War Assets Administration. By Act of June 30, 1948, 62 Stat. 1202, Congress provided for the abolition of that agency to be effective as of February 28, 1949. By Act of February 21, 1949, 63 Stat. 6, the date of abolition was extended to June 30, 1949. On March 15,

1949, the War Assets Administration notified petitioner that his last day of active duty would be March 31, 1949, and that he would be carried on an annual leave status until December 23, 1949, and on furlough status until March 14, 1950 (Pet. App. p. 1a). Thousands of other employees, as well as petitioner, were dismissed as a result of the abolition of the agency (Pet. App. p. 2a) and when petitioner received his notice of separation he was the only employee remaining on his retention register, every other employee in his competitive level having previously received notice of separation (Pet. App. p. 4a). On June 30, 1949, the War Assets Administration was in fact abolished.

Petitioner appealed his dismissal to the Civil Service Commission, contending that he was improperly separated from the War Assets Administration and that he should have been transferred to the General Services Administration. This latter agency was created by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, 381, for the purpose, among other things, of liquidating the remaining functions of the War Assets Administration (Pet. App. p. 3a). The Civil Service Commission upheld petitioner's removal (Pet. App. 1a). Petitioner later brought suit in the Court of Claims for back pay from March 30, 1949 to February 5, 1951.[1] By decision of July 12, 1956, the Court of Claims, one judge dissenting, held that petitioner had been properly removed from the War Assets Administration and that Section 12 of the Veterans

[1] Petitioner secured employment with the Department of the Army on this date (Pet. App. 1a).

Preference Act did not require that he be transferred to the General Services Administration.

ARGUMENT

The present petition is based on a misconstruction of the opinion of the Court of Claims. That court held that petitioner was not an employee of the War Assets Administration on June 30, 1949, and not entitled to transfer rights under Section 12 of the Veterans Preference Act because he had been "effectively separated" from the War Assets Administration prior to June 30, 1949 (Pet. App. p. 6a). This holding, we submit, is unquestionably correct. The Court of Claims did not hold, as petitioner erroneously asserts (Pet. p. 4), that he was not an employee of the War Assets Administration on June 30, 1949, merely because he was on annual leave on that date.

The portion of Section 12 on which petitioner relies (Pet. p. 2) provides:

> * * * when any or all of the functions of any agency are transferred to, * * * some other agency * * * all preference employees in the function or functions transferred * * * shall be first transferred to the replacing agency, * * * for employment in positions for which they are qualified before such agency * * * shall appoint additional employees from any source for such positions.

It is plain that this grants transfer rights only to preference employees who are "in the function" transferred at the time of its transfer. On June 30, 1949,

the time of the transfer of the remaining functions of the War Assets Administration, petitioner was not in any function of that agency. Prior to that time, namely on March 15, 1949, he had been notified that he would be permanently removed from active duty on March 31, 1949, and he was so removed.

Petitioner, quoting from the dissenting opinion in the Court of Claims, contends that he had transfer rights under Section 12 despite the fact that he had been permanently removed from active duty because he was "still a government employee and [was] being paid only because he [was] a government employee" (Pet. 4). This, however, is not an accurate statement of petitioner's status at the time of the abolition of the War Assets Administration.

Petitioner's removal pursuant to the abolition of the War Assets Administration did not require any prior notice to be effective under either the Veterans Preference Act or Civil Service Commission regulations. Section 12 of the Veterans Preference Act, governing removals pursuant to reduction in force, is not strictly applicable to removals pursuant to the abolition of an agency. Even if applicable, Section 12 would not give petitioner a right to a prior notice because it, unlike Section 14, governing removals for cause, does not contain any notice requirement. *Fass* v. *Gray,* 197 F. 2d 587, certiorari denied, 344 U. S. 849 (C. A. D. C.); *Ashley* v. *Ross,* 191 F. 2d 655 (C. A. D. C.).

The Civil Service Commission regulation governing notice periods to employees of liquidating agencies is

contained in 5 C. F. R. 20.12 (1949) which provides in pertinent part:

> *Special Regulations on liquidation.* Whenever it has been determined that all functions and all positions in an entire department, an entire governmental entity, or an entire competitive area are to be abolished within a specified time period, actions may be taken in regard to individual employees at different dates at administrative discretion: * * * *Provided further,* That notices to group A–1 and A–2 employees with competitive status shall be made to conform to the notice requirements of § 20.10.

Section 20.10 provides in pertinent part:

> *Notice to Employees.* An employee in Group A–1 or A–2 with competitive status affected by a reduction in force shall be given an individual notice in writing one year before the action becomes effective. His one-year notice period shall be composed of, whenever possible, at least 30 days in an active duty status; a non-duty status with pay for the duration of his leave, if any; and the balance of the year in a furlough or leave without pay status. Exceptions to this rule are authorized when * * * the agency as a whole is liquidating, in which case the notice period shall terminate as of the day the agency is finally liquidated * * *
>
> Each employee affected by reduction in force shall be given an individual notice in writing at least 30 days before the action becomes effective. Where it is not possible to continue the employee in an active-duty status for the period specified in the notice, he shall have the greatest

> possible notice before he is relieved from active duty and shall thereafter be carried on the rolls for the remainder of the period * * *.

On June 28, 1948, the head of the War Assets Administration requested authority of the Civil Service Commission to conduct removals in accordance with Section 20.12 (R. 42–43). The Civil Service Commission granted this authority by letter of June 30, 1948 (R. 44–45). Under these regulations, the most petitioner was entitled to was a notice 30 days prior to his removal. Petitioner received such a notice on March 15, 1949, more than 30 days prior to the abolition of the War Assets Administration. However, petitioner also received a one year notice period despite the fact that, as an employee of a liquidating agency, he was clearly not entitled to any.[2] He was purportedly granted this period because the Director of Personnel of the War Assets Administration desired to grant the employees of that agency every possible benefit,[3] and it was solely for this reason that petitioner was still carried on the rolls of the War Assets Administration on June 30, 1949.

---

[2] The purpose of the one year notice period is to "facilitate the return to duty" of employees who had been temporarily reduced in force (R. 54). This purpose does not apply, of course, where the removal is pursuant to the abolition of the agency. However, the notice period has certain incidental advantages for employees, *e. g.*, six months of the notice period may be credited to the employee for retirement purposes (R. 54).

[3] The Director of Personnel of War Assets Administration wrote the Civil Service Commission as follows:

"In order to extend every advantage to status employees to encourage continuous employment with this agency, the follow-

Except for this, he would have been finally removed from the rolls of the War Assets Administration no later than April 14, 1949, 30 days after he received his notice of removal, at which time he would have received the monetary value of his accrued annual leave as a lump sum under the Lump Sum Payment Act of 1944, 58 Stat. 845, 5 U. S. C. 61 (b) (1952). Because petitioner was granted this one year period, he was permitted to receive his annual leave in regular payments until it was exhausted, at which time he was placed in a furlough status for the remainder of the period. In these circumstances, it cannot be said that petitioner was "being paid as an employee" on June 30, 1949; he was not receiving any additional

---

ing interpretation is the one we would prefer to place on the regulation in question [20.12]:

"'a. All employees in the competitive service in reduction in force subgroups A–1 and A–2 will continue to receive a one year notice of reduction in force. * * * (R. 49).'"

The Civil Service Commission replied:

"* * * Since Public Law 862 directed the liquidation of War Assets Administration as of February 28, 1949, ordinarily notices issued to A–1 and A–2 employees should provide for termination on the date of the liquidation of the agency.

"The Commission has no objection to the issuance of one-year notices by your agency in cases where it is agreeable to agencies to which any functions are transferred either on a continuing or a liquidating basis (R. 50)."

It should be further noted that the agreement of the General Services Administration, the agency to which the remaining functions of the War Assets Administration were transferred, was never obtained. The one year notice period which the War Assets Administration purported to give petitioner not only does not confer upon petitioner the transfer rights which he asserts, but was not given in conformance with the authority granted by the Civil Service Commission.

, but was receiving only funds which he had viously earned and to which he was in any event tled. Neither can it be said that the fact that tioner was technically on annual leave on June 1949, entitled him to transfer rights under Section which he otherwise would not have had. He had permanently removed from active duty and his is was clearly not that of one "in the function" sferred at the time of its transfer as Section 12 ires. When petitioner received the one year notice eceived more than he was entitled to, and his at- ot to use this notice as a basis for obtaining still ner unauthorized benefits cannot be sustained. holding of the Court of Claims rejecting peti- r's contention and upholding the authoritative g of the Civil Service Commission, the agency fically charged with the administration and en- ment of the Veterans Preference Act (5 U. S. C. 1952), is clearly correct.

CONCLUSION

r the foregoing reasons, it is respectfully sub- d that the petition should be denied.

J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
SAMUEL D. SLADE,
LINO A. GRAGLIA,
Attorneys.

EMBER 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956